

(2010) 01 CHH CK 0032
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 3780 of 2008

Ganesh Prasad Agarwal and Others

APPELLANT

Vs

Chandra Dev Chouhan

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 2(12), 47

Constitution of India, 1950 — Article 227

Court fees Act, 1870 — Section 11, 6

Madhya Bharat Accommodation Control Act, 1955 — Section 5

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 13(1)

Citation : (2010) 3 MPJR 91

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prashant Kumar Mishra, J.—In this petition under Article 227 of the Constitution of India, the petitioners have called in question the legality, validity and propriety of the order dated 23-2-2008 passed by the Executing Court (the Additional District Judge, Bilaspur) in Execution Case No. 24-A/ 2005 (Annexure P-7). By the said order, the learned Executing Court has allowed the respondent / judgment - debtor's application u/s 47 read with Section 151 of the Code of Civil Procedure, 1908 (henceforth "the Code, 1908").

2. The indisputable facts in the present case are that the petitioners / plaintiffs / decree- holders had preferred a suit for recovery of possession and for arrears of rent with respect to the suit premises. The said suit for eviction and arrears of rent was allowed by the Additional District Judge, Bilaspur on 23-11-2005 in Civil Suit No. 24-A/2005 (Annexure P -1) and a decree directing the respondent / defendant to hand over vacant possession of the premises to the petitioners / plaintiffs and to pay arrears of rent by the defendant to the plaintiffs from May, 1996 till the date of recovery at the rate of Rs. 3,500/- per month, after adjusting the rent already deposited by the defendant before the rent controlling

authority.

3. In the first appeal preferred by the defendant bearing F.A. No. 23/ 2006, a conditional interim order was passed, however, upon failure of the defendant to comply with the conditions, the interim order was vacated by this Court on 10-1-2007. The decree was thereafter executed and possession of the premises was handed over to the plaintiffs on 8-4-2007.

4. According to the petitioners, after adjusting the amount deposited by the defendant before the rent controlling authority, a total sum of Rs. 3,19,700/- was to be recovered from the defendant. On different date, the defendant further deposited a sum of Rs. 1,00,000/- which was withdrawn by the plaintiffs.

5. On 26-4-2007, the defendant / respondent / judgment - debtor filed the subject application u/s 47 read with Section 151 of the Code, 1908 raising an objection to this effect that since the plaintiffs / decree -holders have not paid the Court fees on the decretal amount, the execution proceeding is liable to be dismissed. By order dated 23-2-2008, which is under challenge in this petition, the learned Executing Court has directed the petitioners / decree - holders to pay the requisite Court - fees for recovery of the balance amount of arrears of rent.

6. I have heard learned counsel for the parties.

7. Learned Counsel for the petitioners submits that the Executing Court has committed a serious error by directing that the decree-holders have to pay Court - fees on the amount of arrears of rent u/s 11 of the Court-fees Act, 1870 (henceforth "the Act, 1870"). According to him, Section 11 of the Act, 1870 is applicable wherein the suit is for mesne profits or account when the amount decreed exceeds the amount claimed. According to him, the Executing Court ought not to have allowed the judgment - debtor's application u/s 47 read with Section 151 of the Code, 1908 and by allowing the said application, the Court below has committed a serious error of jurisdiction, which requires to be corrected by this Court in exercise of its supervisory jurisdiction.

8. Per contra, learned counsel for the respondent / judgment - debtor has supported the impugned order by referring to the provisions contained in Sections 6 and 11 of the Act, 1870. According to him, application for execution of decree for eviction and arrears of rent would be a document requiring affixation of Court - fees u/s 6 of the Act, 1870 apart from the fact that u/s 11 of the Act, 1870, it will be treated as mesne profits and the amount of Court - fees is leviable before the execution and as such the Executing Court has not committed any error by directing the petitioners to deposit the Court - fees.

9. On perusal of the judgment and decree passed by the learned trial Court directing the respondent / defendant to pay arrears of rent, it does not appear that the defendant, at any stage, had raised an objection or dispute about the necessity of the plaintiffs to make payment of Court - fees on the amount of arrears of rent. No issue was framed by the trial Court to the effect that the

arrears of rent claimed by the plaintiffs cannot be granted in the absence of payment of Court - fees.

10. Sections 6 and 11 of the Act, 1870 read as under: -

6. Fees on documents filed, etc., in Mofussil Courts or in public offices - Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

11. Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed: - In suits for mesne profits or for immoveable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

When the amount of mesne profit is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fees is not paid within such time as the Court shall fix, the suit shall be dismissed.

11. On a plain reading of the above provisions, it would appear that Section 6 of the Act, 1870 applies at the time of initiation of the proceedings, which, in the present case, has been duly complied with by the petitioners at the time of filing the suit and the said fact is not in dispute. An application for execution for recovery of arrears of rent during pendency of the suit is not such a document which requires affixation of Court - fees under the First or Second Schedule of the Act, 1870.

12. Under the provisions of the Act, 1961, a tenant is duty - bound to deposit monthly rent during pendency Of the suit as a statutory tenant and that non - payment of arrears of rent is itself a ground for eviction. Arrears of rent, in a suit for eviction under the Rent Control Act on the grounds enumerated u/s 12 of the Madhya Pradesh Accommodation Control Act, 1961 (henceforth "the Act, 1961"), cannot be equated as damages or mesne profits so as to attract Section 11 of the Act, 1870. The said provision contained in Section 11 of the Act, 1870 applies where the suit is for mesne profits or account, whereas in the present case, the suit is for arrears of rent.

13. In State of Punjab and Another Vs. British India Corporation Ltd., , the

Hon"ble Supreme Court has dealt with the question as to what is the meaning of the word "rent" used in clause (ii) of Rule 18(4) of the Punjab Urban Immovable Property Tax Rules 1941 and explained in its decision at para 15 as under:

(15) The next question is what is the meaning of "rent" in clause (ii) of Rule 18(4). In its wider sense rent means any payment made for the use of land or buildings and thus includes the payment by a licensee in respect of the use and occupation of any land or building. In its narrower sense it means payment made by tenant to landlord for property demised to him.....".

14. The terms "mesne profits" have been defined u/s 2(12) of the Code, 1908 in the following manner:

"2. Definitions: - In this Act, unless there is anything repugnant in the Subject or contest, -

xxxxx xxxxx xxxxx xxxxx

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence, have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.

15. From the above noted meanings of the word "rent" and the words "mesne - profits", it is explicitly clear that arrears of rent to be paid by a tenant to a landlord in a suit for eviction instituted on grounds enumerated u/s 12 of the Act, 1961 can never be treated as mesne profits and, therefore, the learned trial Court completely fell into error by referring to and in taking assistance of Section 11 of the Act, 1870 to allow the respondent /judgement - debtor's application u/s 47 read with Section 151 of the Code, 1908.

16. In Kailash Narain vs. Mangilal, 1978 (1) MPWN 446, it has been held by the Madhya Pradesh High Court that when rent is deposited during the pendency of eviction suit either u/s 5 of the Madhya Pradesh Accommodation Control Act, 1955 or u/s 13(1) of the Act, 1961 and if the amount is withdrawn by the plaintiff, there is no need to pay Court-fees.

17. The learned Executing Court has completely mis-directed itself and has misconstrued the provisions of Section 11 of the Act, 1870 inasmuch as mesne profits and arrears of rent are two different concepts. Section 11 of the Act, 1870 mandates levy of Court - fees on mesne profits and not on arrears of rent. In the opinion of this Court, the learned Executing Court has committed a serious error of jurisdiction, which needs to be corrected by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

18. The present writ petition, therefore, succeeds and is allowed. The impugned order passed by the Executing Court is set aside. Parties to bear their own costs.